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OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: September 12, 2006

Case Number: TSO-0433

This Decision concerns the continued eligibility of XXXXXXXXXXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization (or "security clearance") under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As set forth below, it is my decision, based on the evidence and testimony presented in this proceeding, that the individual's access authorization should not be restored at this time.

I. Background

The individual has been employed by a DOE contractor since 1982, and held a security clearance at the contractor's request. In August 2005, the individual informed DOE that she had been arrested for driving while intoxicated (DWI), her fifth alcohol-related arrest while holding a clearance. Ex. 33. In order to resolve the security concern arising from the arrest, DOE conducted a Personnel Security Interview (PSI) with the individual in November 2005 (Ex. 51). The PSI did not resolve the concern and, in March 2006, a DOE consultant-psychiatrist evaluated the individual. The psychiatrist diagnosed her as suffering from alcohol dependence without adequate evidence of rehabilitation or reformation and a user of alcohol habitually to excess.

In June 2006, the local security office (LSO) informed the individual how to proceed to resolve the derogatory information that had created a doubt regarding her continued eligibility for access authorization. Notification Letter (June 5, 2006). The Notification Letter stated that the derogatory information regarding the individual falls within the purview of 10 C.F.R. § 710.8 (h) and (j) (Criteria H and J). DOE invoked Criterion H based on information in its possession that the individual has an illness or mental condition that causes or may cause a significant defect in her judgment or reliability. The DOE Operations Office invoked Criterion J on the basis of information that the individual has been or is a user of alcohol habitually to excess, or has been diagnosed by a board-certified psychiatrist, or other licensed physician or a licensed clinical psychologist as alcohol dependent or as suffering from alcohol abuse. 10 C.F.R. § 710.8 (j). In this regard, the Notification Letter cites the aforementioned diagnosis of the DOE consultant-psychiatrist that the individual suffers from alcohol dependence, which in the opinion of the DOE consultant-psychiatrist is

an illness or mental condition that causes or may cause a significant defect in the individual's judgment or reliability. 10 C.F.R. § 710.8 (h).

In a letter to DOE Personnel Security, the individual exercised her right under Part 710 to request a hearing in this matter. 10 C.F.R. § 710.21(b). The Director of OHA appointed a Hearing Officer on September 15, 2006. After conferring with the individual and the appointed DOE counsel, 10 C.F.R. § 710.24, the Hearing Officer set a hearing date, but the individual's counsel filed a Motion to Continue the Hearing Date. That Motion was granted on January 16, 2007. I was appointed Hearing Officer on February 1, 2007, and set a new hearing date within the time granted for extension. At the hearing, the DOE consultant-psychiatrist (DOE psychiatrist) testified on behalf of the agency. The individual testified on her own behalf and also elected to call a forensic psychiatrist, an alcohol counselor, her previous manager, her EAP counselor, and a close friend as witnesses. The transcript taken at the hearing shall be hereinafter cited as "Tr." Various documents that were submitted by the DOE counsel during this proceeding constitute exhibits to the hearing transcript and shall be cited as "Ex." Exhibits submitted by the individual shall be cited as "Ind. Ex."

II. Analysis

The applicable regulations state that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable or unfavorable, as to whether the granting of access authorization would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.7(a). Although it is impossible to predict with absolute certainty an individual's future behavior, as the Hearing Officer I am directed to make a predictive assessment. There is a strong presumption against the granting or restoring of a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance).

I have thoroughly considered the record of this proceeding, including the submissions of the parties, the evidence presented and the testimony of the witnesses at the hearing convened in this matter. In resolving the question of the individual's eligibility for access authorization, I have been guided by the applicable factors prescribed in 10 C.F.R. § 710.7(c): the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct, to include knowledgeable participation; the frequency and recency of the conduct; the age and maturity of the individual at the time of the conduct; the voluntariness of the participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct; the potential for pressure, coercion, exploitation, or duress; the likelihood of continuance or recurrence; and other relevant and material factors. After due deliberation, it is my opinion that the individual's access authorization should not be restored at this time because I cannot conclude that such a restoration would not endanger the common defense and

security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). The specific findings that I make in support of this determination are discussed below.

A. Findings of Fact

The individual began drinking at the age of 12. Her mother, father, grandfather and sister suffered from alcoholism. In 1981, at the age of 21, the individual was arrested for driving while under the influence (DUI). Ex. 46. She then participated in a six-week court-ordered DUI program. Ex. 55. She began working for the contractor in 1982 and was granted a clearance the same year. Ex. 50, 53. She was arrested again in 1988 for driving while intoxicated (DWI), second offense. Ex. 43. This was her second alcohol-related arrest, but her first while holding a clearance. On this occasion, she was in an automobile accident and was admitted to a local emergency room unconscious. Ex. 41. In October 1989, she was arrested again for DWI. Ex. 44. In April 1990, she was arrested for Battery of a Domestic Partner in an incident that occurred after she and her partner had been drinking. Ex. 38. She then voluntarily entered a 30-day outpatient program, stopped consuming alcohol and began to attend Alcoholics Anonymous (AA). Ex. 54 at 42; Ex. 52 (2000 PSI) at 27. However, her attendance at AA decreased over the years, and in 1998 she resumed drinking alcohol.

One afternoon in March 2000, the individual consumed four or five beers. 2000 PSI at 14-15. Around 8:30 p.m. she was driving a motorcycle and had a serious accident that resulted in three broken ribs, a dislocated shoulder, and a punctured liver. She was taken to the hospital unconscious, and she remained in the hospital until August 2000. *Id.* at 17. She was charged with DUI. During a PSI in August 2000, the individual told DOE security that she had no intentions to drink in the future. *Id.* at 43, 67. She began attending AA and counseling that year. Ex. 57. The individual was ordered to undergo an evaluation by a DOE consultant-psychiatrist and, in February 2001, a DOE consultant-psychiatrist diagnosed her as suffering from alcohol abuse without adequate evidence of rehabilitation or reformation. Ex. 27. The psychiatrist opined that this diagnosis probably understated her alcohol problem. At the time, she told the consultant-psychiatrist that she had been abstinent for eight months. He recommended two years of treatment and two years of abstinence in order to show rehabilitation from alcohol abuse. *Id.*

In May 2001, the LSO issued a notification letter to the individual based on the evaluation of the DOE consultant-psychiatrist, the individual's history of alcohol use and poor judgment, and her record of four alcohol arrests while holding a "Q" clearance. She participated in an administrative review hearing, and in November 2001, the OHA hearing officer decided that her clearance should not be restored at that time. *See Personnel Security Hearing, Case No. VSO-0460, 28 DOE ¶ 82,824 (2001) (Ex. 56)*. At the time of the hearing, the individual had been abstinent for 16 months. Ex. 56. In March 2003, DOE headquarters (HQ) requested a second psychiatric evaluation. Ex. 5. The same DOE consultant-psychiatrist concluded in June 2003 that the individual now demonstrated adequate evidence of rehabilitation at that time, since she had two years of abstinence and treatment. Ex. 6 at 2. As a result of this positive evaluation, DOE/HQ restored the individual's clearance in June 2003. Ex. 5.

In 2004, the individual stopped attending AA and resumed alcohol use. In August 2005, the individual was arrested again and charged with DWI. Ex. 33. Her blood alcohol level (BAL) was 0.16. She completed a six-week intensive outpatient program (IOP) at a local hospital in October 2005. Ind. Ex. 4. During a psychiatric evaluation in March 2006, a DOE psychiatrist determined that she suffered from alcohol dependence, was a drinker of alcohol habitually to excess, and that her alcohol dependence was an illness or mental condition that causes or may cause a significant defect in her judgment or reliability.

In order to show adequate evidence of rehabilitation from her alcohol problems, the DOE psychiatrist recommended in his report that the individual either: (1) attend Alcoholics Anonymous (AA) with a sponsor at least once a week for a minimum of 300 hours in a year and abstain from alcohol for three years; or (2) complete a six-month alcohol treatment program and abstain for five years. *Id.* In order to demonstrate reformation from alcohol abuse, the individual must abstain for ten years, or abstain for three to five years if she attends one of the two rehabilitation programs. *Id.*

B. DOE's Security Concerns

The excessive use of alcohol raises a security concern because of its intoxicating effect. "Because the use of alcohol at the very least has the potential to impair a user's judgment and reliability, individuals who use alcohol to excess may be susceptible to being coerced or exploited to reveal classified matters. These security concerns are indeed important and have been recognized by a number of Hearing Officers in similar cases." *Personnel Security Hearing*, OHA Case No. VSO-0417, 28 DOE ¶ 82,798 (2001), quoting *Personnel Security Hearing*, OHA Case No. VSA-0281, 27 DOE ¶ 83,030 at 86,644 (2000). In this case, the individual was diagnosed by a DOE psychiatrist as suffering from alcohol dependence and has had six alcohol-related arrests, five while holding a security clearance. Therefore, DOE's security concerns are valid and the agency has properly invoked Criteria H and J in this case.

C. Hearing Testimony

1. The Individual

At the hearing, the individual described her alcohol treatment history. Tr. at 210-268. She attended group counseling and a six week intensive outpatient program in 1988 after her first DUI. *Id.* at 258. In 1990, she voluntarily entered a 30-day inpatient program. *Id.* at 259. She then attended EAP for one year and also attended AA. *Id.* at 219, 266. However, her AA attendance became irregular around 1998, and she experienced family trauma when her father died from alcoholism and her grandmother, who had raised her, also died. *Id.* at 222. In addition, her 10-year relationship with her alcoholic partner ended. *Id.* at 232. She was not working the 12-Step program of AA, became overconfident, and thought that she could drink again because she had been sober for almost eight years. *Id.* at 223. However, in March 2000, she was arrested for DWI after a motorcycle accident that left her with very serious injuries. From 2000 to 2004, she saw a counselor and was in AA with a temporary sponsor. She again became overconfident about her sobriety and her

AA attendance tapered off in 2004. In August 2005, she was arrested for her most recent DWI.

The individual testified that she had not consumed alcohol since the night in August 2005 when she was arrested (18 months prior to the hearing). She began a court-ordered rehabilitation program in May 2006, and completed the program in 10 months instead of the typical year. The program required her to call the group headquarters daily, and she was subject to random drug tests. She attended two group sessions per week, and did not miss any sessions. She also began attending AA two nights a week and once a week met with a smaller group of women, also members of AA, who get together to review the 12-Step program. She testified that she is a different person now because of her sponsor and the loss of her job. *Id.* at 215-216. She has been in a committed relationship with a new partner for four years. *Id.* at 237. She and her partner keep alcohol in the house, but she avoids vulnerable areas, such as bars. *Id.* at 286-288.

2. Other Witnesses

As further evidence of rehabilitation and reformation, the individual presented the testimony of a close friend, her former manager, the EAP mental health counselor, a behavioral health therapist, and her AA sponsor.

The manager testified that the individual was a good employee, and had no performance problems. He had never seen her drink alcohol. *Tr.* at 23-31. Her friend has known the individual for 30 years, and is familiar with the individual's program and treatment. She testified that the individual is giving 100% to stay sober, and that the individual has told her that she is learning a lot from her alcohol treatment programs. *Id.* at 195-205.

The individual's sponsor testified that she has worked with the individual for almost one year. *Id.* at 146. The sponsor has been in AA for 18 years, and explained that it was her responsibility to lead the individual to those parts of the AA program that work. They talk weekly, and the sponsor also leads the women's group that the individual attends once a week. The sponsor believes that the individual is sober. *Id.* at 147-162.

The EAP mental health counselor described the individual's EAP recovery agreement, which consists of weekly AA meetings, random tests, and one session monthly with the counselor. *Id.* at 36-83. The counselor has no expertise in substance abuse, and sent the individual out for evaluation. Their meetings were curtailed after the individual lost access to the site. *Id.* at 49.

The behavioral health therapist has 28 years of experience as a substance abuse counselor, and works at the local hospital IOP that the individual completed in October 2005. *Id.* at 85-87. That program met nine hours a week for six weeks. It is an abstinence based program with a focus on relapse prevention. The individual attended all sessions and completed the program successfully. The counselor considers the individual motivated because she has a lot to lose now. *Id.* at 114.

3. The Forensic Psychiatrist

The forensic psychiatrist interviewed the individual for the purposes of the hearing in January 2007. Tr. at 299. He concluded that her alcohol dependence is in sustained full remission because she has been abstinent for over one year. *Id.* at 304. He also opined that she shows adequate evidence of rehabilitation or reformation, based on the treatment she has had, her two home groups in AA, a relationship with a permanent sponsor and a new commitment and involvement in her recovery. He also explained that relapses occur in the natural course of alcoholism. Further, he was impressed that her mother and sister are involved in her program now, and found that very important because her family had been dysfunctional, and it had been difficult for her to trust. *Id.* at 308. According to the forensic psychiatrist, the individual is now “connecting” with those who can help her recovery. *Id.* at 324-328.

4. The DOE Psychiatrist

The DOE psychiatrist heard all of the testimony at the hearing and testified that his recommendation did not change. *Id.* at 332. Despite her past history, the DOE psychiatrist admitted that he was very impressed with the changes in the individual and her progress towards sobriety since he evaluated her in March 2006. He is convinced that she will be able to achieve the recommended three years of abstinence and treatment. However, at the time of the hearing, she had an insufficient period of abstinence and treatment to show adequate evidence of rehabilitation or reformation, especially in light of the seriousness of her alcohol problem. In fact, the DOE psychiatrist stated that of the 1500 individuals he has evaluated for DOE, this case is among the five worst. *Id.* at 333. He labeled her a “very grave case.” He was most concerned that the individual has had four DWIs while holding a clearance—he testified that he cannot remember another case where a clearance holder had so many alcohol-related arrests. The DOE psychiatrist had recommended three years of abstinence, and by the date of the hearing, she had only achieved 18 months of sobriety and treatment.¹ Further, according to the DOE psychiatrist, the individual now talks like a person in an active program of recovery, but her risk of relapse was still too high for him to give her a favorable recommendation. *Id.* at 339-340.

D. Evidence of Rehabilitation and Reformation

In a Part 710 proceeding, the Hearing Officer gives great deference to the expert opinions of mental health professionals regarding rehabilitation or reformation. See *Personnel Security Hearing*, Case No. VSO-0476, 28 DOE ¶ 82,827 (2001). In this case, both psychiatrists agreed that the individual suffered from alcohol dependence. However, the DOE psychiatrist argued that the individual has a high risk of relapse and needs more time

¹ The DOE psychiatrist argued that there was no corroboration of her alleged 18 months of abstinence. The individual's partner could have corroborated this allegation, but she did not testify. However, corroboration of the length of abstinence would not have changed his opinion. Tr. at 337.

for treatment and abstinence in order to be rehabilitated or reformed from her condition. The forensic psychiatrist contends that the individual is in sustained full remission from her alcohol dependence and is participating in an excellent recovery program. After reviewing the record of this case, I agree with the DOE psychiatrist that the individual is not yet rehabilitated or reformed.

The individual has held a clearance since 1982 and, in that time, she has had very serious problems with alcohol. These problems pose an unacceptable level of risk to DOE security. She has attended AA several times, with varying levels of commitment, and each time her attendance wanes she suffers another alcohol-related incident. Since her clearance was granted in 1982, the individual has had the following alcohol-related arrests:

- March 1988 (DWI, BAL 0.22, auto accident)
- October 1989 (DWI, refused breathalyzer)
- April 1990 (Battery on a Household Member—individual and partner had been drinking)
- March 2000 (DUI, motorcycle accident, no breathalyzer because admitted to hospital unconscious)
- August 2005 (DWI, BAL 0.17)

Despite various types of alcohol treatment since 1988, she continues to relapse. In her 1991 PSI, the individual stated that “you won’t ever see me drinking.” Ex. 54 at 97. In her 1992 PSI, the individual explained that she learned not to pull away from the program because that makes her susceptible to relapse. Ex. 53 at 17. Nonetheless, she relapsed in 1998 and was arrested in 2000. In her 2000 PSI, the individual stated her intent not to drink in the future. Ex. 52 at 43. Unfortunately, she relapsed again in 2004 and was arrested in 2005. At the hearing in 2007, she again pledged to remain abstinent.

After evaluating the evidence in this case, I find that the individual has not mitigated the security concerns associated with Criteria H or J. 10 C.F.R. § 710.8 (h) and (j). In my observation at the hearing, the individual appeared determined to maintain her abstinence. All of her references from the treatment programs she attended praised her commitment and enthusiasm for the programs. She showed no hint of denial about the severity of her alcohol problem, a positive reflection on her character and the programs that she has attended. Unfortunately, her long history of alcohol-related arrests while holding a clearance and the relatively short length of her abstinence (considering the gravity of her problem) weigh against a positive prognosis. Even though she admitted that any drift from regular attendance at AA will cause a relapse, she has twice allowed her attendance at AA to drop off, each time with disastrous results. She suffered two alcohol-related driving accidents that caused her severe injuries. This is her second pass through the administrative review process, and she has been suspended from a job she held for 23 years and hoped to retain until retirement. Amazingly, despite all of the trouble caused by her consumption of alcohol, she continues to keep alcohol at her home. The words of the DOE consultant-psychiatrist at the individual’s 2001 hearing still ring true in 2007:

So the fact that she had entered into treatment [in 1990] is a good sign, certainly, and it helped, and she went eight years without having any relapses

or probably not drinking, *but in terms of her prognosis, I think I'd have to say that the fact that she had a relapse after a good treatment program would be a negative factor in terms of that would maybe predict that she's likely to have another one even if she entered treatment now.*

Personnel Security Hearing, 28 DOE ¶ at 85,847 (emphasis added).

The DOE psychiatrist accurately predicted the individual's future -- her attendance at AA fell off around 2004, she had another DWI arrest in 2005, and she now finds herself in a second administrative review proceeding. Based on her behavior as set forth above, and the relative brevity of her abstinence and treatment program, I find that at this time the individual poses an unacceptable level of risk. Thus, in view of Criteria H and J and the record before me, I cannot find that restoring the individual's access authorization would not endanger the common defense and security and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored. Any party may seek review of this Decision by an Appeal Panel under the procedures set forth at 10 C.F.R. § 710.28.

Valerie Vance Adeyeye
Hearing Officer
Office of Hearings and Appeals

Date: June 13, 2007